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Statutory Leave in the UK



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NB We have asterisked* statutory unpaid leave



Paid and Unpaid Leave: what you must do as an employer to be compliant

Employees are legally entitled to leave from work in a range of different circumstances. Leave can be paid or unpaid, but the differences aren't always clear. It's also hard to find all this information in one place and the internet is a minefield of articles and sometimes quite inaccurate information. In this document, we have set out to explain as many of the types of leave available to your employees, paid and unpaid, to help demystify the somewhat complex information out there and ensure that you remain compliant and can support your staff as effectively as possible.

Paid leave is when an employee takes time off work and receives money from you as their employer. Full-time employees are entitled to a minimum of 5.6 weeks of paid annual / holiday leave each year, known as statutory leave entitlement. Employees are also entitled to paid sick leave, maternity leave and paternity leave. This works in the same way for part-time employees, just on a pro-rata basis. Any other days off where employees are not entitled to statutory pay is known as **unpaid leave**.

An employee can request an unpaid leave of absence for many reasons including family emergencies, medical appointments, and caring for dependents. In most of these circumstances, there is a statutory entitlement to time off, but in other circumstances (such as an emergency that does not involve a dependent) there is no statutory entitlement to time off. However, 'best practice' employers will do their best to allow for life's curve balls, granting time off as appropriate, and ensuring their workforce understands all the terms and conditions (which may include penalties where false representations are made for statutory leave). As an employer you need to make sure that all guidelines in your employee handbook are well defined, so that employees are clear on their rights and their obligations. You also need to specify which types of leave will be paid (and at what rate) and which types of leave will be unpaid. All of this will help you protect your company against any disputes or claims of discrimination.

It is also worth considering that paid and unpaid leave can be enhanced, and you may wish to offer more than the statutory entitlements to your employees, to help to boost your employee benefits and core package to retain and attract talent.

Paid Leave

Annual Leave

Statutory annual leave is the legal minimum amount of paid holiday that almost all workers (including casual and agency staff) are entitled to. It is currently 28 days or 5.6 weeks. In the UK this usually includes the 8 statutory bank holidays (although there is no legal requirement to give employees these days off, unless stated in the contract of employment). Part time workers are entitled to a pro rata amount of annual leave. Employees do not need a minimum period of service before they start accruing leave, although an employer can specify when this leave is taken.

Sick Leave

Statutory sick leave is the time taken off work by an employee who is too ill to work. Statutory sick pay is applied when the sickness lasts longer than three days, and as an employer you must pay statutory sick pay from the fourth day that the employee is unable to work. Statutory sick pay is a fixed amount that is paid for up to 28 weeks. Whilst employees are on sick leave, they continue to accrue annual leave, and they're entitled to use it during the sick period. If an employee is ill just before or during their holiday, they can take it as sick leave instead. All of these entitlements are subject to reporting and certification requirements.

Statutory Maternity Leave

Statutory maternity leave is the time off work granted to an employee before and after giving birth. The maximum is 52 weeks of maternity leave. 'Ordinary maternity leave' covers the first 26 weeks and 'Additional maternity leave' covers the second 26 weeks. The earliest that an employee can commence that leave is 11 weeks before the expected birth date (unless complications arise, such as premature birth). By law, employees must stay off work for at least 2 weeks following birth (or 2 weeks for those who work in certain manual roles, such as factory workers).

Antenatal Leave

Pregnant employees have the right to reasonable time off with full pay for pregnancy-related ('antenatal') appointments and care before having their baby. This applies from the first day of their employment and if they work full time or part time. Appointments need to be on the advice of a doctor, nurse or midwife and can include:

- scans
- pregnancy health checks
- relaxation classes, for example pregnancy yoga
- parent craft classes

Employers are entitled to request proof of these appointments, such as an appointment card.

Adoption Leave

If an employee is adopting a child, they are eligible to get time off to attend 2 adoption appointments after they've been paired with a child. As an employer you can ask for proof of adoption to ensure that your employee qualifies for adoption leave pay. Additionally, an employee and their partner may be able to qualify for shared adoption leave, where they can share up to 50 weeks of leave and up to 37 weeks of pay. In simple terms, adoption leave mirrors the entitlements of maternity leave (for the primary adopter) and paternity leave (for the primary adopter's partner).

Paternity Leave

Paternity leave is the time off work granted to an employee if they and their partner are having a baby, adopting a child or having a baby through a surrogacy arrangement. Qualifying partners can take a maximum of 2 weeks of paid paternity leave and the earliest the leave starts is the date of childbirth or later. However,

it must end within 56 days of the child's birth. If an employee has more than one child e.g., twins or triplets, the amount of time remains the same and paternity leave can only start on either the actual date of birth, an agreed number of days after the birth, or an agreed number of days after the expected due date.

Shared Parental Leave

Shared parental leave (SPL) enables employed mothers to end their maternity leave and pay and move into SPL and pay, provided both parents satisfy the eligibility requirements. The mother and partner must have worked for their employers continuously for at least 26 weeks up to the 15th week before the expected week of childbirth. The mother can choose whether to give up her leave and the parents can choose how to share any SPL, either taking it in turns or taking time off together. Eligibility, notification, and variation procedures are complex but at least eight weeks' notice must be given before the SPL starts.

Neonatal Care Leave (In progress)

The Neonatal Care (Leave and Pay) Bill is currently working its way through parliament and will likely give employees an entitlement to take up to 12 weeks of paid leave if their babies require specialist care after birth. This is in addition to other leave entitlements such as maternity and paternity leave.

Once in law, neonatal care leave will be available to employees from their first day in a new job and will apply to parents of babies who are admitted into hospital up to the age of 28 days, and who have a continuous stay in hospital of 7 full days or more.

This leave will be available to biological parents or partners who share in the upbringing of the child. Those in a surrogacy arrangement with a Parental Order in place will also be eligible.

Parental Bereavement Leave Policy (Jack's Law)

Employed parents are entitled to 2 weeks' bereavement leave during the year following the death of their child. This accounts for employed parents who have lost a child under the age of 18, and excludes self-employed workers. Rights to parental leave for bereavement are also available to adoptive parents, as long as the adoption placement has not been obstructed.

This can be taken in 2 sections of 1 week periods or a single block of 2 weeks together. The employer is not allowed to refuse, postpone or amend the dates chosen by the employee, however, the leave should be taken within 56 weeks, starting on the day of the death of their child. If the employee loses more than one child, they have the right to a period of bereavement leave for each child.

Unpaid Leave

The following types of leave are unpaid unless the employer makes a policy decision to apply payments. Some of these unpaid leave types are statutory, which means, the employer is obliged to allow the employee the relevant time off work, where other leave types are not statutory but it is generally considered to be 'good practice' for employers to allow the employee the relevant time off work. (We have asterisked* statutory unpaid leave.)

It is always important to state your position on these different types of leave and pay arrangements in your employment documentation to avoid any confusion, and to ensure that all employees are treated equally (rather than adopt an 'at our discretion' approach).

Carer's Leave* (In progress)

In response to the 2020 consultation on carer's leave, the Government has confirmed that it will introduce a new statutory right of up to one week (i.e., five working days) of unpaid leave for carers, when parliamentary time allows. Employees who have a spouse, partner, civil partner, child, parent, household member or person who reasonably relies on them for care (i.e., a dependant) will be eligible to exercise their right to statutory carer's leave. This right will be exercisable from day one of their employment.

Antenatal Leave – Fathers & Partners*

An employee is entitled to unpaid leave to accompany a pregnant woman to up to 2 antenatal appointments (maximum of 6.5 hours per appointment), providing they are:

- The father of the baby
- The expectant mother's civil partner or spouse
- In a long-term relationship with the expectant mother
- The intended parent (i.e., they are having a baby through a surrogacy arrangement)

Dependants (Emergency)*

Time off for dependants is when an employee takes time off work to deal with an **emergency** involving a dependant. This could be a child, grandchild, parent, spouse, partner, or someone who depends on them for care. 'Emergency' in this context could include illness or injury, disruption of care arrangements, an incident at school, etc.

There is no set amount of time an employee can take off as it depends on the situation and there is no limit to the number of times an employee can take time off for dependants. You can choose to pay an employee to look after a dependant, but you don't have to. It's worth noting that an employee can't take time off for a dependant if they knew about the situation beforehand.

Compassionate / Bereavement

Compassionate leave is the time an employee takes off to look after a dependant, or sick relative. Bereavement leave refers specifically to the time an employee takes off following the death of a loved one.

Generally, employers will always enable employees to take time off work in these circumstances. As with all leave types, however, it is important to have a policy in place to ensure no conflict of understanding or potential for discrimination where one employee is treated differently to another.

Parental Leave*

Parental leave, distinct from shared parental leave, is (usually) unpaid leave for an eligible employee to look after their child's welfare. This might be for an employee to spend more time with their children, look at new schools, help children adapt to new childcare arrangements, or to spend more time with other family members such as grandparents. Parental Leave allows 18 weeks' leave, per parent, per child, up to the child's 18th birthday. The leave is taken in blocks of not less than one week and not more than one month at a time and the allowance extends across the child's life to the age of 18 (not across the employee's engagement with his or her employer).

Employer Supported Volunteering (ESV)

ESV is where the employees of an organisation take time off to volunteer during work hours. Employees can choose to use their volunteering time to support a charity or community group of their own choice, or to take up an opportunity provided by their company. Examples of this for short-term opportunities could include giving careers talks in schools, delivering a workshop or supporting a charity event. Over the longer-term this could include mentoring, acting as a school governor or charity trustee.

Special Leave

Special leave is the term used to describe time off work that doesn't fit into any of the other categories of leave. There are many different types of special leave which you are entitled to by law. Some types of leave are at the discretion of your employer.

Some things that may justify special leave include a domestic crisis, hospital appointments, court appearances, trade union representation and public duties.

Sabbatical Leave

Sabbatical leave is an extended period of time off work that companies can offer to eligible employees. It can be requested by employees for a variety of personal and professional reasons such as travel, study, volunteering, or spending time with family. Paid sabbatical leave just means that an employee is being paid – partially or in full – for the duration of their absence. However, it is more usual that sabbatical leave is unpaid.

The length of a sabbatical leave period depends on the employer but is usually longer than a standard employee holiday, which means at least four to six weeks. It should also be less than a year, which would generally be construed as being more of a career break.

Study Leave

Granting time off work for work-related study leave ensures that employees are not required to use their holiday entitlement or burn the midnight oil in order to be successful in their professional exams. Generally, employers who sponsor their employees' professional development will include an appropriate number of *paid* study days to help ensure their success.

The rules around statutory leave – eligibility, entitlements, rates of pay, periods of pay, qualifying and reporting conditions – can change from year to year. This document is designed to present you with a top-line overview, only, of the current position. If you would like further support in understanding your legal duties the sources below will be a good place to start. If you would like help in drafting or evolving your current policies our HR team will be pleased to help.

Sources

<https://maternityaction.org.uk/advice/time-off-for-antenatal-care/>

<https://maternityaction.org.uk/advice/rights-at-work-for-fathers-and-partners/>

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www.acas.org.uk

<https://www.gov.uk/employers-maternity-pay-leave>

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<https://www.carersuk.org/news-and-campaigns/campaigns/right-to-carers-leave>

https://www.cipd.co.uk/Images/employer-supported-volunteering-guide_tcm18-27612.pdf

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<https://businessadvice.co.uk/hr/paid-and-unpaid-leave-uk-everything-you-need-to-know/#:~:text=The%20main%20types%20of%20paid,paternity%2C%20sick%20and%20annual%20leave.>

<https://www.cipd.co.uk/knowledge/fundamentals/emp-law/maternity-paternity-rights/factsheet#ref>

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<https://www.bliss.org.uk/research-campaigns/influencing-policy-and-working-in-parliament/neonatal-leave-and-pay-campaign>

<https://www.gov.uk/government/news/parents-whose-babies-require-neonatal-care-to-receive-paid-leave-under-new-law-backed-by-government>

<https://www.gov.uk/taking-sick-leave>